

D.T.E. 01-54-B

Investigation by the Department of Telecommunications and Energy on its own Motion into
Competitive Market Initiatives.

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I. INTRODUCTION

On June 29, 2001, the Department of Telecommunications and Energy (“Department”) opened an investigation in Competitive Market Initiatives, D.T.E. 01-54. The primary objective of this investigation is to “minimize or eliminate any barriers to competitive choice,” and to “identify and implement initiatives that [will] expand the range of competitive options available to consumers.” D.T.E. 01-54, at 1-2. In order to immediately expand the competitive options available to default service customers, the Department directed electric distribution companies to provide the names, addresses, and rate classification of their default service customers to licensed competitive suppliers and electricity brokers, upon request, for the purpose of marketing electricity-related services to consumers in Massachusetts (“Customer Information Lists” or “Lists”). Id. at 5-7.

On October 15, 2001, the Department issued an Order directing the electric distribution companies to expand the information contained in the Customer Information Lists to include customers’ historic usage data. Customers also were given the opportunity to “opt-out” or to be removed from the Lists. D.T.E. 01-54-A at 9-14. In addition, the Department directed the distribution companies to include information about their standard offer service customers on the Lists. The first Customer Information Lists were made available to suppliers on March 7, 2002. Updated versions of the Lists are to be made available quarterly, beginning in June 2002.

The Department stated that the following issues would be addressed in the second phase of D.T.E. 01-54: (1) the ways in which distribution companies could perform the role of

electricity brokers for their default service customers; (2) the information required for suppliers to successfully enroll customers; and (3) the implementation of electronic transactions for customer authorizations. D.T.E. 01-54-A at 37-38. On November 14, 2002, the Department held a technical session with interested parties to discuss these Phase II issues. In addition, comments were submitted by American PowerNet, the Attorney General of the Commonwealth of Massachusetts (“Attorney General”); AES New Energy, Green Mountain Energy Company, the National Energy Marketers Association, the NewPower Company, SmartEnergy, Inc., and Strategic Ltd. (jointly, the “Competitive Suppliers”); the Commonwealth of Massachusetts Division of Energy Resources (“DOER”); Dominion Retail (“Dominion”); Duke Energy Trading and Marketing (“Duke”); Fitchburg Gas and Electric Light Company (“Fitchburg”); Massachusetts Electric Company and Nantucket Electric Company (together, “MECo”); NSTAR Electric (“NSTAR”); the National Association of Industrial and Office Properties (“NAIOP”); the National Consumer Law Center (“NCLC”); Power Options, Inc. (“Power Options”); Select Energy (“Select”); Siemens Building Technologies, Inc. (“Siemens”); Usource, L.L.C. (“Usource”); and Western Massachusetts Electric Company (“WMECo”).

II. PHASE II ISSUES

A. Distribution Company Aggregation of Default Service Customers

1. Introduction

In D.T.E. 01-54-A at 37, the Department identified for discussion two electricity broker-type services that distribution companies could provide in order to move their default service customers to competitive supply. First, the companies could aggregate their default service customers and place this load out to bid through an Internet-based auction. Second, distribution companies could obtain direct authorization from their default service customers (e.g., by telephone call or post card) to switch the customers to competitive supply. During the November 14, 2002 technical session, a third broker-type service was identified whereby distribution companies could aggregate and directly assign their default service customers to competitive suppliers (without first obtaining direct authorization).

2. Summary of Comments

a. Internet-based Auctions

As part of its comments, Usource proposed a pilot program in which it would conduct an Internet-based competitive market solicitation for each distribution company's standard offer service and default service customers (Usource Comments at 2-5). In this pilot program, the role of the distribution companies would be to educate and market the program to their customers, and to provide the necessary customer account information to Usource. Customers participating in the pilot would be required to stay with the selected supplier for a specified period of time, provided that the program price was less than a specified target price

(i.e., provided that the program price would provide savings to participating customers).

Usource proposed that its pilot program would be conducted in three phases. Participation in the initial phase of the pilot program would be limited to medium-sized businesses. During the second phase, the pilot program would be expanded to include smaller business customers.

Finally, approximately 18 months after the start of the program, all other customers would be eligible to participate in the third phase of the pilot program (id.).

There was widespread opposition to distribution companies performing Internet-based auctions for the purpose of moving their customers to competitive supply (see e.g., Attorney General Comments at 2; Competitive Suppliers Comments at 1-3; Dominion Comments at 2; MECo Comments at 2-3; NAIOP Comments at 1-2; NSTAR Comments at 6; Power Options Comments at 1; Select Comments at 1-2; Siemens Reply Comments at 4; WMECo Comments at 2-3). Commenters argue that such aggressive marketing by distribution companies is not appropriate in a restructured marketplace. Instead, commenters suggest that the appropriate role of a distribution company is to educate customers and facilitate an efficient process by which suppliers can enroll customers. The commenters generally argue that the Department should not endorse one specific marketing technology (i.e., Internet-based auctions) over others, and that all suppliers, including Internet-based auction vendors, should promote and sell their services on a competitive basis. There was similar opposition to the specific Usource pilot proposal, with commenters generally stating that Usource should pursue business opportunities in competition with other vendors (Competitive Suppliers Reply Comments at 2; DOER

Comments at 2-4; DOER Reply Comments at 1-2; MECo Reply Comments at 3-4; NCLC Reply Comments at 3-4).

The Attorney General and Fitchburg both state that it may be appropriate for distribution companies to provide their customers with access to Internet-based auctions, provided that the companies' actions do not favor any particular supplier (Attorney General Comments at 4; Fitchburg Reply Comments at 1-2). American PowerNet also supports having distribution companies promote Internet-based auctions (American PowerNet Reply Comments at 1-2). Finally, DOER supports the Usource approach in principle (DOER Comments at 4).

b. Distribution Company-Initiated Switches

The distribution companies, Power Options, and Select all oppose a program where distribution companies would obtain authorization from default service customers to switch the customers to competitive supply (Fitchburg Reply Comments at 2; MECo Comments at 3-4; NSTAR Comments at 8; Power Options Comments at 1; Select Comments at 1; WMECo Comments at 2). These commenters state that the development of a sustainable competitive market requires that suppliers and customers communicate with each other and reach agreement on specific offers that will derive savings and promote a positive customer interaction. MECo and NSTAR add that the current lack of competitive suppliers providing service to residential customers would render this approach unworkable at the present time (MECo Comments at 3-4; NSTAR Reply Comments at 2).

The Competitive Suppliers and Dominion support having distribution companies obtain authorizations from residential customers, patterned after a program implemented by

Consolidated Edison in New York (Competitive Suppliers Comments at 3-4; Dominion Comments at 3). However, the Competitive Suppliers and Dominion state that a distribution company's role should be limited to informing customers of the available choices and implementing a customer's decision to switch. The Competitive Suppliers and Dominion argue that, while this approach may help to move a limited number of customers into the competitive market, it is not a substitute for more substantial efforts to stimulate the market, such as the direct assignment of customers, as discussed below. The Attorney General states that a distribution company should be allowed to switch customers to competitive supply, provided that it has first obtained the appropriate authorization from the customer (Attorney General Comments at 4). DOER also supports this approach in principle (DOER Comments at 4).

c. Customer Assignment

Most commenters oppose the direct assignment of default service customers to competitive suppliers, asserting that it would violate the affirmative choice requirements of G.L. c. 164, § F(8) (see e.g., Attorney General Comments at 4; Dominion Comments at 2; Fitchburg Comments at 2; NAIOP Comments at 2-3; NCLC Comments at 5-7; NSTAR Comments at 9; Power Options Comments at 1; Select Comments at 2; Siemens Reply Comments at 5-6). Dominion argues that suppliers should bear the responsibility for acquiring their own customer base, particularly with respect to residential customers (Dominion Comments at 2). NCLC characterizes the experience in Georgia, where direct assignment has been implemented for natural gas customers, as having produced "little but angry customers and negative press" (NCLC Reply Comments at 7-8).

DOER argues that direct assignments have been problematic when used in Georgia and Pennsylvania, but states that if the Department determines in the future that electric restructuring is not proceeding as desired, this issue should be revisited (DOER Comments at 4-6). MECo states that a large-scale direct assignment requires the finalization of many details, but merits further consideration (MECo Comments at 4-5).

The Competitive Suppliers support the direct assignment of residential customers, arguing that such assignment “is the most effective mechanism to ensure that residential customers complete the transition to a fully competitive market.” The Competitive Suppliers state, however, that direct assignment is not appropriate for the commercial and industrial market (“C&I”), as this market has matured more quickly in Massachusetts (Competitive Suppliers Comments at 4-5). Contrary to the observations of NCLC and DOER, the Competitive Suppliers argue that direct assignment has worked well in Georgia and in Pennsylvania (*id.* at 4-6). The Competitive Suppliers urge the Department to study the benefits of direct assignment as a means of preparing both consumers and suppliers for a vibrant market at the end of the standard offer service transition period (Competitive Suppliers Reply Comments at 2).

3. Analysis and Findings

The traditional role of a distribution company in the competitive generation market has been that of a facilitator (*i.e.*, processing customer enrollment transactions submitted by competitive suppliers, ensuring that suppliers receive customers’ metering, billing, and payment information in a timely manner, and, more recently, compiling and making available the

Customer Information Lists). Having distribution companies take more direct steps to move default service customers to competitive supply (whether through Internet-based auctions, obtaining customer authorizations, or the direct assignment of customers) would change their role from passive market-facilitators to more active market-builders. This active role certainly would not be appropriate for distribution companies in a mature, robust competitive market, where there is a range of available competitive options and consumer interest in pursuing these options. However, in the near term, it is reasonable to argue that development of a robust market may require that distribution companies perform a more active role to move customers towards competitive supply.

Customer migration statistics compiled by DOER¹ indicate that residential and small commercial and industrial customers are not currently turning to the competitive market in significant numbers. From a supply perspective, there is currently a lack of competitive options available for these customer classes, as evidenced by the list of active competitive suppliers maintained by each distribution company.² From a demand perspective, prices for standard offer service are still generally below cost and these smaller customers are likely to be most

¹ Information on customer migration is available DOER's website at <http://www.state.ma.us/doer>. The data suggest that a competitive market is developing to serve both large and medium C&I customers, as evidenced both by the percentage of electricity consumed by these consumer classes that is provided by the competitive market, and by a comparison of consumption that is competitively provided versus consumption that is provided through default service. However, the customer migration data indicate that an active competitive market has not yet developed for small C&I and residential customers.

² The active competitive supplier lists maintained by the distribution companies show only one competitive supplier currently serving residential customers in Massachusetts.

hesitant to switch from their well-established, regulated electric companies to a lesser-known competitive supplier, particularly during the early years of electric restructuring.

Requiring distribution companies to act as natural aggregators for their distribution customers is one initiative that may or may not be appropriate as the electric industry moves from a monopoly to a competitive structure. However, a number of policy and legal concerns were raised by the commenters with respect to both the general proposals to have distribution companies take more direct steps to move default service customers to competitive supply, as well as the specific USource proposal. Due to the complexity of these issues, we will not require or approve any specific distribution company proposal at this time. We will, however, continue to investigate these issues in the context of our broader inquiry in Provision of Default Service, D.T.E. 02-40 (2002), where we will consider all aspects of the manner in which default service is provided to ensure that it is compatible with the development of a robust competitive market.

B. Information Required for Customer Enrollment

1. Introduction

The method by which competitive suppliers enroll customers for generation service is governed by the electronic business transactions standards (“EBT Standards”) approved by the Department in Terms and Conditions, D.P.U./D.T.E. 97-65 (1997). To successfully enroll a customer, a competitive supplier must submit an electronic transaction to the customer’s distribution company that includes, among other things, the customer’s account number and the first four characters of the customer’s account name. D.P.U./D.T.E. 97-65, at 41-47. The

distribution company does not independently verify that the supplier has obtained the customer's authorization for the enrollment pursuant to G.L. c. 164, § 1F(8)(a) and 220 C.M.R. § 11.05(4). If the electronic transaction contains complete and accurate information, the distribution company processes the transaction and switches the customer to the competitive supplier on the customer's next meter read date.³ Id. If a customer subsequently files a "slamming" complaint, the supplier must demonstrate that it has obtained the necessary authorization from the customer for the switch.

In D.T.E. 01-54-A at 10-20, the Department stated that it would consider the issue of whether the current information requirements for customer enrollment serve as barriers to competitive choice. In Phase II of this investigation, the Department sought comments on the following two issues related to customer enrollments: (1) whether customer account numbers should be included on the Customer Information Lists; and (2) whether the first four characters of a customer's account name should continue to be required for a successful enrollment of the customer.

³ When a supplier submits an enrollment transaction less than two days before the customer's meter read date, the switch occurs on the customer's subsequent meter read date.

2. Summary of Comments

a. Customer Account Numbers

DOER, Dominion, and Select support the inclusion of account numbers on the Customer Information Lists, arguing that this would significantly increase the efficiency by which suppliers could enroll customers (DOER Comments at 6-7; Dominion Comments at 3-4; Select Comments at 2-3). These commenters argue that the Department's existing financial penalties for slamming are sufficient to deter unauthorized enrollments. Id. Dominion argues that Pennsylvania and Virginia have provided supplier access to account numbers without incident, and that the availability of this information has contributed to the success of retail choice in those states (Dominion Reply Comments at 2). As an alternative, if the Department decides not to include account numbers, DOER supports the inclusion of a unique customer identifier on the Customer Information Lists (DOER Reply Comments at 3).

Conversely, the distribution companies, the Attorney General, the Competitive Suppliers, NAIOP, Power Options, and Siemens oppose the inclusion of customer account numbers on the Customer Information Lists, arguing that this information would increase the potential for unauthorized enrollments or slamming (Attorney General Comments at 5; Competitive Suppliers Comments at 7; Fitchburg Reply Comments at 3; MECo Comments at 5; NAIOP Comments at 3; NSTAR Comments at 11; Power Options Comments at 1-2; Siemens Reply Comments at 6; WMECo Comments at 3). NSTAR argues that protecting consumers from potentially unscrupulous marketing practices must take priority over any minimal reduction in enrollment costs (NSTAR Comments at 11). Although the Competitive Suppliers

also oppose the inclusion of account numbers on the Customer Information Lists, they support the use of unique customer identifiers in order to allow them to efficiently track individual customers as the Lists are updated (Competitive Suppliers Comments at 7).

b. Elimination of Customer Account Name

NSTAR, Power Options, Siemens, and WMECo support the elimination of the first four characters of the customer account name as a required element for the enrollment of all customers, arguing that it causes confusion and may act as a barrier to efficient enrollments (NSTAR Comments at 12; Power Options Comments at 2; Siemens Reply Comments at 6; WMECo Comments at 3). NSTAR states that the extra level of protection against accidental switching provided by this requirement causes unnecessary potential for error and could be eliminated without any adverse effect on customers (NSTAR Comments at 12). The Competitive Suppliers, DOER, and Select support the elimination of this enrollment requirement for C&I customers only, arguing that the account name requirement has caused enrollment problems almost exclusively for these customers with multiple account names (Competitive Suppliers Comments at 9; DOER Comments at 7; Select Comments at 3).

The Attorney General and MECo oppose the elimination of the first four characters of the customer account name as a required element for a successful enrollment transaction. These commenters argue that the requirement provides an appropriate assurance that the supplier is enrolling the proper account and an additional protection to consumers against unauthorized enrollments (Attorney General Comments at 5; MECo Comments at 6).

3. Analysis and Findings

a. Customer Account Numbers

In determining whether customer account numbers should be included on the Customer Information Lists, the Department must balance the competing goals of (1) eliminating barriers to the development of a robust competitive market and (2) ensuring that customers are not switched to competitive suppliers without their affirmative consent. For suppliers that market to a large number of customers, obtaining account numbers from customers may introduce some inefficiencies into the enrollment process. First, customers may not have their account numbers readily available when responding to marketing inquiries. In order to switch service to the competitive supplier, these customers would need to locate their electric bills. This additional step could decrease enrollment rates. Second, customers may read their account numbers incorrectly or the supplier's representative may incorrectly transcribe the account number when processing an enrollment, causing the enrollment transaction to be rejected. Providing suppliers with access to customers account numbers by means of the Customer Information Lists would certainly reduce these inefficiencies.

However, including customer account numbers on the Lists would also compromise the primary protection against unauthorized enrollments provided to customers under the Department-approved EBT Standards. The underlying premise of the enrollment transactions incorporated in the EBT Standards is that suppliers have knowledge of a customer's account number only by directly contacting the customer and obtaining the customer's affirmative authorization to initiate service. Under the EBT Standards, the distribution companies need not

take any action to verify that customers have given affirmative authorization for an enrollment. In this way, the Massachusetts enrollment process differs significantly from that in Pennsylvania and Virginia where distribution companies are required to send a written notification to each “enrolled” customer in order to confirm that the supplier has obtained the customer’s affirmative authorization for the switch. In these states, the supplier’s enrollment request is not processed until ten days after the customer has been notified. If, within the ten day period, the customer informs the distribution company that authorization was not provided, the distribution company cancels the enrollment request.⁴ See e.g., Electronic Data Exchange Standards for Electric Deregulation in The Commonwealth of Pennsylvania at 18-25.

If customer account numbers were to be included on the Lists, we would need to rely on the deterrent effect of the penalties specified in G.L. c. 164, § 1F(8)(d) and 220 C.M.R. § 11.07 as the sole protection against slamming.⁵ Even with such penalties, it is likely that unauthorized enrollments will occur. Although the Department has established a complaint procedure that provides customers with the opportunity to seek redress for unauthorized enrollments, any decrease in consumer confidence caused by negative public

⁴ The approach adopted by Pennsylvania and Virginia requires suppliers to submit enrollment transactions at least 15 days prior to a customer’s meter read date for the switch to take place on that date. Conversely, the approach adopted in Massachusetts places only a two-day advance notice requirement on suppliers.

⁵ Any competitive supplier who initiates generation service to a customer without first obtaining evidence of affirmative consent one or more times in a twelve month period is subject to a civil penalty not to exceed \$1000 for the first offense and not less than \$2000 nor more than \$3000 for any subsequent offense per customer. Any competitive supplier who is found to have slammed customers more than 20 times in a twelve month period may, after hearing, have its licence suspended for up to one year. 220 C.M.R. § 11.07.

reaction to allegations of electricity slamming could work against the Department's long-term objective of establishing a robust competitive marketplace. In addition, requiring customers to take the active step of providing their account numbers to suppliers helps to ensure that the customers understand the results of the actions they are initiating. For these reasons, we conclude that the potential disadvantages of including account numbers on the Lists outweigh the efficiencies that may be gained from the inclusion of these numbers. Therefore, distribution companies shall not be permitted to include customer account numbers on their Customer Information Lists.

As stated above, several commenters support the use of unique customer identifiers on the Customer Information Lists in order to allow suppliers to track individual customers as the Lists get updated. In D.T.E. 01-54-A at 23, the Department stated that, if feasible, the Customer Information Lists should include such identifiers to assist suppliers in tracking customers as the Lists get updated. The Department directed the Competitive Markets Working Group⁶ to evaluate such feasibility. The report submitted by the Working Group indicates that Fitchburg and MECo can include a customer identifier on their List, while NSTAR and WMECo must modify their computer systems to incorporate an identifier on their Lists (Working Group Report at 2). However, NSTAR and WMECo state that, if the Department determines that customer account numbers should not be included on the Lists, they will perform

⁶ The Department convened the D.T.E. 01-54 Working Group "to develop the details associated with the implementation of certain of the directives contained in that Order. D.T.E. 01-54, at 27-28. The Working Group submitted a "Report of the Working Group" on January 16, 2002.

the necessary modification to accommodate the inclusion of unique identifiers (id.). Based on the Department's directive above, and the information included in the Working Group Report, the Department directs each distribution company to include unique identifiers on the updated versions of the Customer Information Lists to be made available in September 2002.

b. Elimination of Customer Account Name

Like the account number, requiring the first four characters of a customer's account name to process an enrollment transaction acts as a safeguard against unauthorized enrollments because suppliers need to know that information before an enrollment transaction can be processed. In addition, use of the first four characters of a customer account name acts as a safeguard against unintentional enrollment mistakes by suppliers when entering a customer's account number as part of an enrollment transaction. As with the discussion above regarding customer account numbers, the Department must balance the need to eliminate barriers to the development of a competitive market with the appropriate safeguards to ensure that customers have authorized the switch to a competitive supplier.

Numerous C&I consumers have multiple accounts with their distribution companies and each account may have a different account name. The account name requirement has caused significant problems for suppliers attempting to enroll these customers, because, although the consumers can readily avail themselves of their various account numbers, it is much more difficult for them to identify the account name assigned by the distribution company to each account. Eliminating the account name requirement would remove a significant regulatory

barrier for these consumers and the competitive suppliers attempting to serve them. The Department concludes that, for C&I customers, the inefficiencies caused by the first four character account name requirement are greater than the protection from unauthorized or erroneous enrollment that it provides. Therefore, the Department directs the distribution companies to eliminate this enrollment requirement for C&I customers. The distribution companies shall work with the Electronic Business Transactions Working Group⁷ to revise the enrollment transactions accordingly. The distribution companies shall report to the Department, within 30 days of the date of this Order, on progress made toward eliminating this requirement for C&I customers.

Conversely, account names pose few enrollment problems for residential customers because the account name is typically the last name of the customer of record and the account name appears on the Customer Information Lists. The issue of multiple accounts does not typically arise for residential customers. Since it has not been shown to be a barrier to residential enrollments, the Department will not eliminate the account name requirement for residential customers.

⁷ The Electronic Business Transactions Working Group was formed to develop standard transactions and formats for electronic transfer of information between distribution companies and competitive suppliers. D.P.U./D.T.E. 97-65, at 4.

C. Additional Customer Information List Information

1. Introduction

In addition to account numbers, the Department stated that it would address what additional information should be included on the Customer Information Lists in Phase II of this investigation. Specifically, we sought comments on whether the Lists (1) should be expanded to include information about customers of competitive suppliers; and (2) should include information about customers' service delivery points.⁸ D.T.E. 01-54 Hearing Officer Memorandum, dated December 11, 2001.

2. Summary of Comments

a. Competitive Supply Customers

The Competitive Suppliers, DOER, Duke, Select, Siemens, and WMECo support the expansion of the Lists to include competitive supply customers, stating that customers of competitive suppliers should reap the same benefits from inclusion on the Lists as standard offer service and default service customers (Competitive Suppliers Comments at 10-11; DOER Comments at 8; Duke Reply Comments at 1; Select Comments at 3; Siemens Reply Comments at 7; WMECo Comments at 4). These commenters state that the Lists should indicate whether a customer is receiving standard offer service, default service, or competitive supply. However, they state that the lists should not identify the name of the competitive supplier, arguing that this would reveal sensitive business information to the suppliers' competitors and

⁸ The service delivery point refers to the voltage (primary or secondary) at which a customer takes service. This voltage distinction affects the line losses adjustment factor that distribution companies apply to the customer's metered consumption.

their wholesale suppliers. Fitchburg, MECo and NSTAR also state that they are not opposed to the inclusion of competitive supply customers on the Lists (Fitchburg Reply Comments at 3; MECo Comments at 6-7; NSTAR Comments at 9-10).

Conversely, the Attorney General, NAIOP, and Power Options oppose including the names of competitive supply customers on the Lists. The Attorney General and Power Options state that releasing information about customers that have already switched to a competitive supplier will not increase participation in the retail competitive market (Attorney General Comments at 6; Power Options Comments at 2). NAIOP argues that a customer's choice of competitive supplier can have commercial significance and should not be involuntarily disclosed (NAIOP Comments at 3).

b. Service Delivery Point

The Competitive Suppliers, DOER, Dominion, Select, Siemens, and WMECo state that the Customer Information Lists should indicate whether customers are receiving service at primary or secondary voltage (Competitive Suppliers at 10-11; DOER Comments at 8; Dominion Comments, at 4-5; Select Comments at 3; Siemens Reply Comments at 7; WMECo Comments at 3-4). The Competitive Suppliers state that, without this information, suppliers cannot accurately determine the cost of providing electricity to customers (Competitive Suppliers Comments at 10-11). The Competitive Suppliers, DOER, and Dominion further recommend that information regarding customers' nodal locations⁹ also be included on the

⁹ Under the congestion management system to be implemented by the ISO-NE, the location of a customer's load in New England may affect the wholesale costs that a
(continued...)

Lists, in anticipation of a new congestion management system that will be implemented at the wholesale level by the ISO-NE (Competitive Suppliers Comments at 10-11; DOER Reply Comments at 3-4; Dominion Comments at 4-5). Fitchburg, MECo, NAIOP, and NSTAR state that they are not opposed to having the Lists indicate whether customers are receiving service at primary or secondary voltage (Fitchburg Reply Comments at 3; MECo Comments at 6-7; NAIOP Comments at 3; NSTAR Comments at 9-10). However, MECo objects to including nodal information at this time, stating that it would be premature to add this information to the Lists until the ISO-NE has completed its review of congestion management (MECo Reply Comments at 5). Finally, the Attorney General and Power Options object to the inclusion of all service delivery point information, stating that the information is private and should be provided only at the discretion of a customer upon an authorized switch to a competitive supplier (Attorney General Comments at 5; Power Options Comments at 2).

3. Analysis and Findings

a. Competitive Supply Customers

In D.T.E.01-54, at 5-7, the Department directed distribution companies to compile Customer Information Lists for their default service customers. Later, we directed the companies to expand the Lists to include standard offer service customers, as these customers should also have the opportunity to choose an alternative electricity supplier. D.T.E. 01-54-A at 23. Including information for competitive supply customers on the Lists will similarly serve

⁹(...continued)

supplier will incur in providing service to the customer. A customer's nodal location indicates where on the New England electricity grid the customer takes service.

to broaden the range of competitive options for these customers if they seek an alternative supplier. Therefore, the Department directs the distribution companies to expand the Customer Information Lists to include information regarding the customers of competitive suppliers. Because of competitive concerns, however, the Lists shall not identify the name of the competitive supplier serving a particular customer. In addition, before inclusion on the Lists, the distribution companies shall provide competitive supply customers an opportunity to “opt out,” consistent with the procedures established in D.T.E. 01-54-A at 25-27, prior to the update that will be made available in September 2002.

b. Service Delivery Point

In D.T.E. 01-54-A at 18-19, the Department recognized that information regarding customers’ service delivery points has value to suppliers in projecting their wholesale costs. Although the Department requires that this information be included on the Lists, we directed the Working Group to review the means by which each distribution company makes information regarding customers’ service delivery points available to suppliers, stating that we may revisit the issue of whether this information should be included on the Lists if it is not readily available by some other means. Id.

The Working Group determined that whether a customer takes service at primary or secondary voltage (affecting the line loss adjustment factor applied to the customer’s metered consumption) is “not readily available” on distribution company websites (Working Group Report at 3). The Working Group report indicates that Fitchburg, MECo, and NSTAR could readily include this information on their Customer Information Lists (id.).

The Department concludes that information regarding customers' service delivery points is of sufficient importance that it must be readily available to suppliers. Therefore, the Department directs each distribution company to include service delivery point information for each customer on the Customer Information Lists, beginning with the updated version of the List to be made available in September 2002. With respect to customers' nodal or zonal location within New England, the ISO-NE currently anticipates that it will begin implementation of its congestion management system in December 2002. Under such a system, information regarding customers' nodal or zonal locations will be important to suppliers. Therefore, the Department also directs each distribution company to include information regarding each customer's nodal or zonal location on the Lists, beginning with the updated version of the List to be made available in September 2002.

D. Electronic Customer Authorizations

1. Introduction

General Laws c. 164, § 1F(8) identifies the following three ways in which competitive suppliers and electricity brokers may obtain customer authorizations: (1) letter of authorization; (2) third-party verification; or (3) toll-free call made by the customer to an independent third party. In D.T.E. 01-54-A at 36-37, the Department endorsed the use of electronic signatures for customer enrollment transactions, provided that "at the time and point of signature of an agreement with a competitive supplier, a consumer is made aware with sufficient force and clarity and without ambiguity that his electric signature will be taken as a matter of law as an expression of his then-present intent to bind himself to the terms of a contract for the

competitive supply of electricity.” The Department stated that we would investigate the development of “technical processes and consumer protections necessary to implement the use of electronic signatures consistent with the requirements of the Restructuring Act” in Phase II of this proceeding. Id. The Department invited interested persons to attend a meeting to further discuss this issue on January 16, 2002. As a result of this meeting, on June 5, 2002, a group representing the Attorney General, AES New Energy, Exolink Corporation, Green Mountain Energy Company, and Smart Energy submitted proposed guidelines that would govern the use of electronic authorizations.

2. Proposed Electronic Customer Authorizations Guidelines

The proposed electronic customer authorizations guidelines (“Proposed Guidelines”) include the following principles with regarding to customer enrollments:

1. All electronic enrollment information transfers between the customer and competitive supplier must be by an encrypted transaction to ensure privacy and security of customer information (Proposed Guidelines at I.A.1).
2. The competitive supplier must disclose any particular hardware or software requirements the consumer may need to access the electronic information, e.g., if future documents, such as bills or disclosures, will be appended as documents as opposed to simply included in the text of an email (e.g., “PDF documents”). The competitive supplier must inform the customer if, at any time, the requirements to access information change (id. at I.A.2).
3. The full Terms of Service, as described in 220 C.M.R. § 11.06(3), shall be available on the competitive supplier’s Internet site at which the enrollment takes place. A link to the Terms of Service shall be prominently displayed on a screen that the customer must pass through during the Internet enrollment process. The customer shall be prompted to read and print or save the Terms of Service (id. at I.A.3).

4. The Terms of Service shall be identified by a version number in order to ensure the ability to identify the exact version to which the customer agreed (id. at I.A.4).
5. The enrollment process shall be structured so that, in order to complete the transaction, the customer must pass through a separate screen whose sole purpose is to authorize the competitive supplier to initiate generation service for the customer (id. at I.A.5).
6. The enrollment screen must contain an “I accept” or similar button accompanied by a clear statement that by pressing the button the customer is authorizing the switch to the competitive supplier and accepting the terms and conditions of service (id. at I.A.6).
7. There must be language immediately preceding the “I accept” to the effect: “I consent to the sending and receipt of (notices, bills, disclosures - whichever are applicable) in electronic rather than paper format.” In addition, there must be language to the effect: “You have the right to withdraw this consent at any time (with any conditions or consequences).” In addition, the competitive supplier must disclose the extent to the consent to do business electronically (e.g., just the current enrollment, all future bills, future required disclosures, etc.) (id. at I.A.7).
8. The competitive supplier must maintain a date-stamped record of the customer’s acceptance (id. at I.A.8).
9. The competitive supplier must obtain from the customer the same identifying information (e.g., name and utility account number) that is required for paper enrollments. The competitive supplier may request additional verifying information (e.g., date of birth) (id. at I.A.9).
10. As required by 220 C.M.R. § 11.00, et seq. the competitive supplier must send the customer a written confirmation, the Terms of Service, and Information Disclosure Label prior to the initiation of service. The competitive supplier may provide these documents electronically, but shall give the customer the option to receive them by mail at no charge to the customer (id. at I.A.10).
11. If the documents are provided electronically, the written confirmation may be provided in the form of an e-mail message. The Terms of Service and Information Disclosure Label may be provided by mechanisms including those listed below:

- a. By providing in the confirmation e-mail message a link that brings the customer to a “My Account” section of the competitive supplier’s web site, where, after logging in, the customer will be able to view the Terms of Service and Information Disclosure Label. The confirmation e-mail message shall clearly explain the process the customer must use to log in to the My Account section of the website;
- b. By providing in the confirmation e-mail message links to pages on the competitive supplier’s web site that display the Terms of Service and Information Disclosure Label;
- c. By attaching the Terms of Service and Information Disclosure Label to the confirmation e-mail message; or
- d. By including the text of the Terms of Service and Information Disclosure Label in the confirmation e-mail message.

In all cases, the confirmation e-mail message shall prompt the customer to read and print or save the Terms of Service and Information Disclosure Label (id. at I.A.11).

12. Where the confirmation message, Terms of Service, and Information Disclosure Label are provided electronically, the customer will be presumed to have received the documents 24 hours after they were sent, thus triggering the rescission period. If the confirming e-mail message is returned as undeliverable, the rescission period will not be triggered (id. at I.A.12).
13. Any complaints to the Department that a competitive supplier initiated generation service to a customer without first obtaining the customer’s authorization shall be governed by 220 C.M.R. § 11.07 (id. at I.A.13).
14. Insofar as the Department’s regulations require the competitive supplier to provide the customer with additional documents, e.g., the quarterly Information Disclosure Label, the competitive supplier may provide those documents by any of the electronic means described in §I.A.9 above or by posting the information on the competitive supplier’s web site. In addition, the competitive supplier shall mail to the customer a hard copy of the documents at no charge if the customer so requests (id. at I.A.14).

The Proposed Guidelines also provide that, where customer authorization is required for the release of customer usage information, competitive suppliers may obtain that authorization

electronically. This may be done either by an e-mail message from the customer to the supplier or through an authorization screen on the competitive supplier's web site. Whichever mechanism used must contain a clear statement that the customer is authorizing the release of the usage information (id. at I.B.1).

3. Analysis and Findings

In evaluating the reasonableness of the Proposed Guidelines, the Department must determine whether they satisfy the requirements established in 220 C.M.R. § 11.00 et seq. regarding customer authorizations. The Department's regulations at 220 C.M.R. § 11.05(4)(c)(1), state that (1) suppliers must provide to potential customers "an easily separable document whose sole purpose is to authorize competitive supplier to initiate generation service for a customer" and (2) a letter of authorization must be "signed" and "dated" by the customer. To satisfy these requirements, the Proposed Guidelines state that, for electronic authorization, competitive suppliers must provide a separate screen that the customer must pass through to authorize the enrollment. The Proposed Guidelines require an "I accept" or similar button accompanied by a clear statement that by pressing the button the customer is authorizing the switch to the competitive supplier. The Proposed Guidelines also required that the supplier maintain a date-stamped record of the customer's acceptance.¹⁰

¹⁰ Our regulations at 220 C.M.R. § 11.05(4)(a) and (c) impose the same customer authorization requirements for release of customer usage information as imposed for customer enrollment – a signed and dated letter of authorization from the customer. The Proposed Guidelines permit the customer to authorize release of usage information either via an e-mail message to the competitive supplier or through an authorization screen on the competitive supplier's website.

The Department's regulations at 220 C.M.R. § 11.05(4)(d) state that a competitive supplier may not initiate service before "midnight of the third day following the Customer's receipt of a written confirmation of an agreement to purchase electricity" and the supplier's Terms of Service.¹¹ To address this issue, the Proposed Electronic Guidelines provide that when documents are sent electronically, the customer is presumed to have received them 24 hours after they were sent. However, the supplier must provide hard copies of the documents by mail at no charge to the customer if the customer so requests.

The Department's regulations at 220 C.M.R. § 11.06(4)(c) and (d) require competitive suppliers to "provide" Information Disclosure Labels and Terms of Service "upon request" and to "provide" the Information Disclosure Label to customers quarterly. The Proposed Guidelines allow the competitive supplier to provide the documents in electronic form as described above. If the customer requests, the supplier must provide hard copies by regular mail.

Finally, 220 C.M.R. § 11.06(5) requires that competitive suppliers prepare an information booklet describing a retail customer's rights and "annually mail" the booklet to their retail customers. The Proposed Guidelines allow a competitive supplier to provide the booklet in electronic form. If the customer requests, the competitive supplier must provide a hard copy via mail at no charge to the customer.

¹¹ 220 C.M.R. § 11.06(4)(a) requires that a competitive supplier include its Information Disclosure Label with the written confirmation of an agreement to purchase electricity and the Terms of Service.

Based on the above, the Department finds that the Proposed Guidelines are consistent with, and provide the same protection to consumers as, the Department's regulations on customer authorization. Therefore, the Department approves the Proposed Guidelines for use by competitive suppliers. Suppliers that intend to use electronic authorizations must so inform the Department.

E. Electronic Data Exchange Issues

1. Introduction

The electronic exchange of data between distribution companies and competitive suppliers is an essential component of the competitive market for generation. It accommodates the following three types of transactions: (1) account administration transactions by which competitive suppliers initiate and terminate generation service to customers; (2) monthly usage and billing transactions by which distribution companies send customers' consumption data to suppliers; and (3) payment and adjustment transactions by which distribution companies send customers' payment information to suppliers. D.P.U./D.T.E. 97-65, at 41-47. In D.P.U./D.T.E. 97-65, at 70-73, the EBT Working Group recommended that the transport vehicle for the electronic transactions should be value-added networks ("VANs"), stating that VANs "provide an audit trail, reliable and proven technology, and satisfy minimum criteria in key areas such as security/encryption of transactions and customer information and proof of transmission and receipt." The Department accepted the EBT Working Group's recommendation regarding the use of VANs. Id. at 72. A number of commenters now seek to change the transport vehicle for electronic transactions from VANS to the Internet.

2. Summary of Comments

The Competitive Suppliers, Dominion, Select, and Siemens state that, at the present time, the electronic transfer of data can be accommodated more economically over the Internet than over VANs (Competitive Suppliers Comments at 12-13; Dominion Comments at 5; Select Comments at 3-4; Siemens Reply Comments at 7-8). These commenters urge the Department to establish a policy that the Internet be used for the electronic transmission of data between distribution companies and competitive suppliers, adding that the gas industry standards board (“GISB”) has adopted the Internet as the least-cost electronic data transfer mechanism for use in gas industry transactions.

The distribution companies and DOER state that they support the use of the most efficient and cost-effective means of electronically transporting data (Fitchburg Reply Comments at 4; MECo Comments at 7-9; NSTAR Comments at 12; WMECo Comments at 4). These commenters caution, however, that it is not clear whether an Internet solution is less expensive and provides the same levels of service and reliability as VANs. These commenters recommend that the Department direct the EBT Working Group to fully review the benefits and costs of all alternatives to determine the advisability of switching to a new transport vehicle, and report to the Department recommendations that reflect the consensus of the Working Group participants.

3. Analysis and Findings

It is imperative to the success of the competitive market that the vehicle by which electronic transactions between distribution companies and competitive suppliers occur (1) is

reliable, (2) uses proven technology, (3) ensures the security of the data being transported, and (4) provides an audit trail, including proof of transmission and receipt. The fact that GISB has adopted the Internet as the least-cost electronic data transfer mechanism for use in gas industry transactions suggest that the Internet can satisfy the above criteria. However, the Department does not possess sufficient information to conclude that the Internet would be a more economical solution than the use of VANs.

In D.T.E. 97-65, at 72-73, the Department stated that the detailed operational issues addressed by the EBT Working Group “are and will continue to be subject to rapid change, especially during the early stages of retail access,” and identified the EBT Working Group as the appropriate body to address these technical issues. Therefore, the Department directs the distribution companies to work with the EBT Working Group to investigate whether the Internet represents a reliable and economic alternative to VANs. The distribution companies shall submit a report to the Department on this issue within two months of this Order.

III. ORDER

Accordingly, after due consideration, it is

ORDERED: That all electric distribution companies, licensed competitive suppliers and electricity brokers comply with the directives regarding access to customer information contained herein.

By Order of the Department,

Paul B. Vasington, Chairman

James Connelly, Commissioner

W. Robert Keating, Commissioner

Eugene J. Sullivan, Jr., Commissioner

Deirdre K. Manning, Commissioner